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No.

In The
Supreme Court of the United States

ROBERT O. MILLER, JR.,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Federal Rule of Evidence 408 permit the government to introduce, in a criminal prosecution, statements made by the defendant to attorneys and investigators representing a potential adversary in a civil matter, where the statements are made as a condition for settling that civil case.

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Federal Rule of Evidence

FRE 408 1
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OPINION BELOW

The opinion below is reported at 188 F.3d 1312 (11th Cir. 1999) and is reproduced in the appendix at 1a-11a. Rehearing and rehearing *en banc* were denied in an unpublished order. App. 12a.

STATEMENT OF JURISDICTION

Judgment was entered by the Eleventh Circuit on September 17, 1999. App.1a-11a. Rehearing and rehearing *en banc* were denied on December 13, 1999. App. 12a. Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

FEDERAL RULE OF EVIDENCE

Federal Rule of Evidence 408:

Compromise and offers to compromise:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or

> statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

STATEMENT OF THE CASE

The Petitioner, Robert O. Miller, Jr. and two other persons were indicted in February 1995 by a federal grand jury in Miami. Miller was the president of FTM Corporation and owned 25% of its stock; 62.5% of Thrifty's stock was owned by the Thrifty Corporation and; Thrifty was a wholly owned subsidiary of Pacific Enterprises. Thrifty's and Pacific's main offices were in Los Angeles, while FTM was located in Miami. The indictment charged that FTM, a sporting goods distributor, applied to the Bank of America for letters of credit, using Thrifty's credit line with the Bank, claiming that the money was to pay for merchandise it was ordering for re-sale. In fact, FTM was not buying sporting goods for resale,

but was using the money to pay its operating expenses.

Before the Bank would wire money to the "manufacturers" of the merchandise, it required invoices and bills of lading as proof that the merchandise had been ordered and shipped to FTM. Miller, or one of FTM's employees, would prepare the invoices and bills of lading, using the manufacturer's forms, falsely claiming that the merchandise had been ordered and shipped to FTM. The sporting goods manufacturers (the "beneficiaries" of the letters of credit) were companies whose bank accounts were controlled by Miller. When the Bank wired the money to these accounts, Miller transferred it to FTM's bank account and used it to pay its operating expenses.

In April 1991, Miller notified Pacific Enterprises of the "financial irregularities" that had occurred at FTM from 1986 until early 1991. In response, Pacific immediately sent lawyers, accountants, and investigators to Miami to determine what had occurred. A few days later Pacific and Miller entered into a written agreement in which they promised not to sue ("each of the parties . . . agrees not to commence or prosecute any civil proceeding against the other"). The settlement agreement also required Miller to cooperate

fully with all investigations and audit of

> FTM's financial conditions and practices and . . . truthfully disclose. . . all information with respect to the activities of himself and others concerning all matters related to FTM, both to the company and its affiliates, as well as their respective agents, officers, employees and accounts./[1]

Consistent with the written settlement agreement Miller met with Pacific's lawyers from April 1991 through July 1991. He gave them documents and provided statements detailing the role he, his wife Nina (who was FTM's office manager) and Robert Wohlleber, another FTM employee, played in the use of the letters of credit to finance FTM's operations.

Undeterred by their binding agreement with Miller, Pacific sued him in September 1991 for his "fraudulent actions." Lawyers for these companies

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[1]/ The agreement also provided that FTM would retain Miller as a full-time consultant for at least six months, and then, at FTM's option, on a week-to-week basis. Miller was paid $12,500 a month as a consultant and he was obligated to "carry out the business of FTM" and facilitate the transfer of FTM's management from Miller to a new "team."

then brought Miller's documents and statements to the Federal Bureau of Investigation and the United States Attorney in Miami. Miller, unaware that his statements and documents had been given to the authorities or that Pacific's attorneys were meeting with the FBI and the United States Attorney, defended the civil lawsuit. After two years of litigation, which included extensive discovery, Miller finally was told he was the "target" of a grand jury investigation in Miami, and on February 28, 1995, Miller was indicted.

At his criminal trial in April 1996, the government's witnesses included the lawyers and investigators that took statements and received documents from Miller. Those 1991 statements were recounted by the lawyers and investigators for the jurors, usually from memory,/[2] and the documents were introduced into evidence./[3]

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[2]/ These witnesses, hired by Pacific to investigate the FTM/letter of credit matter, never recorded Miller's statements.

[3]/ Prior to trial Miller asked the district court to prohibit the government from introducing testimony about his 1991 statements (and the documents) given as a condition of and in accordance with the written settlement agreement not to sue. The motion was denied. During his trial

(continued...)

REASONS FOR GRANTING THE WRIT

Certiorari is warranted to resolve the substantial and clearly-defined division among the circuit courts of appeals on the propriety of allowing a defendant's statements made pursuant to FRE 408 to be introduced in his or her criminal case.

The Former Fifth Circuit, in *United States v. Meadows*, 598 F.2d 984, 998 (5th Cir. 1979), has "assume[d] the applicability of Rule 408 to govern the admission of related civil settlement negotiations in a criminal trial."/[4] The Fifth Circuit, in *United States v. Hays*, 872 F.2d 582, 589 (5th Cir. 1989), has reaffirmed that holding. ("As the appellants correctly contend . . . and as the framers of Rule 408

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[3](...continued)
Miller again objected to testimony about the statements and the documents, but his objections were, without exception, overruled.

[4]/ *United States v. Miller*, 188 F.3d 1312 (11th Cir. 1999) was decided by the Court of Appeals for the Eleventh Circuit, which is bound by decisions of the Court of Appeals for the Fifth Circuit decided prior to September 30, 1981. *Bonner v. City of Pritchard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*). The Eleventh Circuit has not overruled *United States v. Meadows*, 598 F.2d 984 (5th Cir. 1981), although it could have in this case.

clearly contemplated the potential impact of evidence regarding a settlement agreement with regard to a determination of [criminal] liability is profound" and its admission constituted plain error)./[5] This position is consistent with the decisions of the Court of Appeals for the Sixth Circuit, *Ecklund v. United States*, 159 F.2d 81, 85 (6th Cir. 1947) (evidence of settlement in civil case should not have been introduced in Ecklund's criminal prosecution because it "left the jury under the impression that the settlement by Ecklund of his civil liability was evidence of his criminal guilt."), and *United States v. Skeddle*, 176 F.R.D. 254, 256 (N.D. Ohio 1997) ("the exclusion of the statements in question [made as part of a civil suit settlement] is not only required by a straight forward application of the rule [408]: that result is supported by the law of this circuit.")./[6]

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[5]/ The purpose of admitting evidence of the defendant's civil settlement agreement in his criminal trial "stands at direct odds with the clear mandates of Rule 408 . . . . " *United States v. Hays*, 872 F.2d 582, 589 (5th Cir. 1989).

[6]/ The facts in *United States v. Skeddle*, 176 F.R.D. 254 (N.D. Ohio) mirror those here. Libby-Owens-Ford Corporation (LOF), investigating some of its executives for "self-dealing," hired private investigators to determine whether its suspicions were warranted. The executives agreed to

(continued...)

The Fourth Circuit Court of Appeals has held, implicitly, that Rule 408 statements may not be used in a criminal trial. In *United States v. Peed*, 714 F.2d 7 (4th Cir. 1983), the owner of a doll collection, fraudulently taken by Peed, secretly recorded conversations with Peed, who promised to return the dolls if the owner "dropped the charges." At her criminal trial for mail fraud, Peed tried and failed to keep the statement from being introduced because the court found that the statement - - "drop the charges and I'll return the dolls," was "an attempt to avoid criminal prosecution, not an effort to resolve a civil claim," *Id.* at 9. There was no civil suit pending and the conversations "were not negotiations aimed at settling a civil claim . . . that the policy seeks to

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[6](...continued)
cooperate with the investigators, but only after LOF agreed to settle any potential civil claims against them. The executives were indicted on the basis of the conduct that resulted in the civil settlement and the government sought to introduce their statements in the criminal trial. The district court granted the defendants' motion to exclude the statements: "When the drafters wanted to exclude certain settlement statements from the scope of Rule 408, they did so . . . . Failure to limit the scope of Rule 408 to civil litigation . . . makes the defendants' statements inadmissible . . . . " *Skeddle, supra* at 257.

encourage." *Id.* at 10./[7]

The Courts of Appeals for the Second and Seventh Circuits have taken a dramatically opposite position and allow statements made in civil settlement negotiations to be introduced in a criminal proceeding:

> According to its terms, Rule 408 does not exclude evidence of statements made in the course of settlement negotiations when that evidence is offered for a purpose other than proving the validity, invalidity or

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[7]/ *United States v. Gonzalez*, 748 F.2d 74 (2d Cir. 1984), ignores Federal Rule of Evidence 1101(b), which states:

> Proceedings Generally - These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, *to criminal cases and proceedings*, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under the Bankruptcy Act.

Id. (emphasis added).

> amount of the claim that gave rise to the settlement negotiations and thus, the statements.
>
> . . . .
>
> [E]ncouraging settlement does not justify excluding probative and otherwise admissible evidence in criminal prosecutions. The public interest in the disclosure and prosecution of crime is surely greater than the public interest in the settlement of civil disputes. It follows that since nothing in the Rule specifically prohibits receiving in evidence the admissions and statements made at a conference to settle claims of private parties, they are admissible in any criminal proceeding.

United States v. Gonzalez, 748 F.2d 74, 78 (2d Cir. 1984) (dictum)./[8] *See also Manko v. United States*,

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[8]/ *United States v. Gonzalez*, 748 F.2d 74 (2d Cir. 1984), ignores Federal Rule of Evidence 1101(b), which states:

(continued...)

87 F.3d 50, 54 (2d Cir. 1996) ("[A]lthough the case law addressing the applicability of Rule 408 in the criminal context is sparse, we have stated, albeit in dicta, that the policy considerations that generally exclude settlement evidence in civil proceedings are not applicable in the criminal context.").

Finally, the Seventh Circuit, in *United States v. Prewitt*, 34 F.3d 436 (7th Cir. 1994), permitted statements made by the defendants to a state securities investigator to settle a state civil action to be introduced at their criminal trial. Citing *United States v. Gonzalez, supra*, the *Prewitt* court held that the "clear reading of this rule [408] suggests that it should apply only to civil proceedings, specifically the language concerning validity and amount of a claim . . . . Nothing in Rule 408 specifically prohibits

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[8](...continued)

> Proceedings Generally - These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, *to criminal cases and proceedings*, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under the Bankruptcy Act.

Id. (emphasis added).

the receipt of evidence in criminal proceedings . . . the admissions and statements made at a conference to settle claims of private parties." *Prewitt, supra* at 439.

CONCLUSION

The petition for a writ of certiorari should be granted to resolve the conflict among the Circuit Courts of Appeals.

Respectfully submitted,

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March , 2000

APPENDIX

APPENDIX A — OPINION OF THE ELEVENTH CIRCUIT COURT OF APPEALS (SEPTEMBER 17, 1999)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-5491

D.C. Docket No. 95-139-CR-HIGHSMITH

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT O. MILLER, JR., NINA MILLER, and ROBERT WOHLLEBER,

Defendants-Appellants.

Appeals for the United States District Court for the Southern District of Florida

(September 17, 1999)

Before TJOFLAT, BLACK and CARNES, Circuit Judges.

PER CURIAM:

Robert Miller ("Miller"), Nina Miller, his wife, and Robert Wohlleber ("Wohlleber") were convicted in

the district court of several offenses arising out of a fraudulent scheme involving letters of credit. They appeal, challenging their convictions and their sentences. We affirm.

I.

A.

In the mid-1980s, Leonard Straus, chairman of Thrifty Corporation ("Thrifty") and avid tennis fan, convinced Thrifty's board of directors to invest in Fox Racket Company ("Fox"), a manufacturer of tennis rackets. Straus also assisted Fox's founder, Vernon Beck, in recruiting Miller to join Fox. The result of that recruitment effort was the formation of FTM, a Thrifty subsidiary that would manufacture and market Fox rackets.[1] Miller was elected president of FTM, Wohlleber was hired as national sales manager, and Nina Miller was hired as office manager. As president of FTM, Miller received a salary of $70,000 a year, a bonus incentive, and an ownership interest in FTM. Wohlleber and Nina Miller received salaries, health insurance, and other perks.

To assist FTM financially, Thrifty allowed FTM to use its Bank of America line of credit. Later, in 1987, Thrifty arranged for FTM to obtain its own line of credit with Bank of America, which Thrifty guaranteed. Originally, FTM's line of credit was for

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1. Subsequently, FTM expanded into other product lines including golf clubs and sporting apparel.

$10 million. That amount was increased to $20 million in 1989 and then to $25 million in 1990. All credit line requests were made by Miller. Initially, Miller requested letters of credit to purchase legitimate merchandise, but once FTM had its own line of credit, Miller began requesting letters of credit for nonexistent merchandise.

Between 1986 and 1991, Miller reported monthly to Thrifty's board and officers that FTM's profits and sales were increasing. In reality, only FTM's debt was rising. Pacific Enterprises ("Pacific"), Thrifty's parent company, discovered this discrepancy in 1991 when it ordered an audit of FTM. At approximately the same time, Pacific received a phone call on its whistle blower hotline reporting that Miller had falsified records. These two incidents led Pacific to initiate an investigation into financial irregularities surrounding FTM.

Pacific's investigators found that Miller had financed FTM using a series of fraudulent applications for letters of credit, bills of lading, and invoices. The scheme worked as follows: Miller would direct Nina Miller and Wohlleber to prepare an application for a letter of credit for one of two companies, Sports Marketing Limited ("SML") and Cactus Golf, on whose bank accounts Miller, Nina Miller, and Wohlleber had authority to write checks.[2] The application would represent that the company wished to sell sporting goods to FTM and that a

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2. At least one additional FTM employee and various bank employees also unknowingly assisted FTM with its fraudulent transactions.

letter of credit would enable FTM to pay for the goods. Typically, Wohlleber signed the name Kevin Eger, Cactus Golf's owner, to the Cactus Golf application, and Nina Miller signed the name Steve Williams, SML's owner, to the SML application. Wohlleber and Nina Miller then sent the applications to Bank of America. If the bank approved the application, it would mail a letter of credit to the seller.[3] The seller in turn would forward the letter of credit to FTM. After receiving these letters of credit, Wohlleber or Nina Miller would create the invoices and bills of lading, evidencing the sale of (nonexistent) goods by Cactus Golf or SML to FTM, and send them on to the bank. If the bank found no discrepancies, it would disburse the requested funds by wiring them directly into the Miami bank accounts of Cactus Golf or SML.

Miller would then obtain these funds in one of two ways. Sometimes, he would write a check payable to American Diversified Sports, a subsidiary of FTM, on the bank account of Cactus Golf or SML, and then deposit the check in FTM's account. Other times, he would create false invoices showing sales from FTM to Cactus Golf or SML, and write a check on Cactus Golf or SML's bank account payable to FTM in the amount of the invoice. Miller would label these illusory sales "export sales" on FTM's books.

By April 1991, Bank of America had issued 195 letters of credit, all based on false documents, to

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3. The letters of credit for SML were mailed directly to FTM; the letters of credit for Cactus Golf were sent to its office in Houston, Texas. Both companies maintained bank accounts in Miami, Florida.

either SML or Cactus Golf. These letters yielded FTM approximately $90,000,000. FTM and Thrifty, as FTM's guarantor, owed Bank of America $19,021,302 on outstanding letters of credit. FTM owed Thrifty an additional $20,639,757, which represented funds Thrifty, as guarantor, had paid the bank.

B.

On February 28, 1995, a grand jury in Miami, Florida returned an indictment against Miller, Nina Miller, and Wohlleber. Count one alleged a conspiracy to: (a) make materially false statements for the purpose of influencing a federally insured financial institution in violation of 18 U.S.C. § 1014 (1994); (b) forge bills of lading in violation of 49 U.S.C. § 121 (1994);[4] (c) execute a scheme to defraud and obtain monies from a federally insured financial institution in violation of 18 U.S.C. § 1344 (1994); and (d) commit wire fraud in violation of 18 U.S.C. § 1343 (1994). In addition, the indictment contained nine counts of making false statements to a bank, ten counts of preparing false bills of lading, twenty counts of bank fraud, and twenty counts of wire fraud. The indictment also charged Miller individually with ten counts of money laundering in violation of 18 U.S.C. § 1956 (1994).

A jury trial commenced on April 29, 1996. After six days of deliberating, the jury convicted Miller of all 70 counts; Nina Miller of two counts of making false statements to a bank, eight counts of bank

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4. This provision was amended July 5, 1994, and is now codified at 49 U.S.C. § 80116 (1994).

fraud, and eight counts of wire fraud;[5] and Wohlleber of the conspiracy count, five counts of making false statements to a bank, eight counts of making false bills of lading, ten counts of bank fraud, and ten counts of wire fraud.

Nina Miller and Wohlleber were sentenced on November 7, 1996; Miller was sentenced on November 22, 1996. Nina Miller received prison sentences totaling 33 months,[6] a five-year term of supervised release, and a $900 fine. Wohlleber was sentenced to prison for a total of 51 months, fined $1,700, and given a five-year term of supervised release. Miller received prison sentences totaling 168 months, a five-year term of supervised release, and a $3,500 fine.

As noted above, in their appeals, the appellants challenge both their convictions and their sentences. We find the challenges to their convictions, which are set out in the margin,[7]

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5. The jury was unable to reach a verdict as to the conspiracy count and three counts of making false statements to a bank. Nina Miller was acquitted of the remaining charges.

6. In determining Nina Miller's base offense level, the district court found that $1,939,660 in letters of credit that were unpaid on March 31, 1991 were directly attributable to her conduct.

7. Appellants challenge their convictions on the following grounds: (1) the evidence was insufficient to (Cont'd)

devoid of merit; we thus affirm their convictions without further discussion.[8] With one exception, which we discuss in part II below, we affirm their sentences without discussion.[9]

(Cont'd)
convict Wohlleber; (2) the district court's supplemental instructions to the jury (in response to a jury question) were unbalanced; and (3) the district court abused its discretion in several evidentiary rulings. These rulings involved (a) the court's exclusion of a Pacific Enterprises' internal audit report; (b) the court's admission of statements made by Miller under the terms of a settlement agreement with Thrifty; (c) the court's refusal to allow Miller to present certain evidence and pursue various lines of inquiry; (d) the court's admission of Richard Eils' deposition into evidence; (e) the court's admission of James Ukropina's statement into evidence; and (f) the court's questioning of witness Steve Williams.

8. *See* 11th Cir. R. 36-1.

9. Miller claims that the court erred in increasing his base offense level by four levels for his role as a leader or organizer of the fraudulent letter-of-credit scheme. Nina Miller contends that her crime was victimless. Wohlleber claims that the court erred in refusing to grant a downward departure from the guideline sentence range based on his post-offense rehabilitation. We affirm appellants' sentences without discussing these challenges because we find the challenges meritless. *See* 11th Cir. R. 36-1.

II.

With the exception of Miller's money laundering convictions, all of the appellants' offenses are governed by Sentencing Guidelines section 2F1.1. Miller's money laundering offenses are governed by Sentencing Guidelines section 2S1.1.

Under section 2F1.1, a defendant's base offense level is determined by the amount of the victims' loss. The victims in this case are Bank of America and Thrifty; their losses are calculated as of March 31, 1991, the day on which the fraud was discovered (a point that appears undisputed). The district court calculated the victims' combined loss at $39,661,059. Of that amount, $19,021,302 represents the letters of credit outstanding to Bank of America when the fraud was discovered on March 31, 1991. The rest, $20,639,757, represents the amount FTM owed Thrifty on fraudulent letters of credit Thrifty reimbursed the bank as FTM's guarantor. To arrive at $20,639,757, the court applied a straight composite average[10] of .748 to the amount FTM owed Thrifty on all letters of credit, $27,593,258.

The district court's loss calculation only affected Wohlleber's sentences. Miller's offenses were grouped into two groups: group I consisted of the

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10. The Government proposed a weighted average in lieu of a straight composite average, but the district court rejected its approach as too speculative. The Government's calculations yielded an intercompany debt of $22,146,349 and a total loss of $41,167,651.

money laundering counts and group II consisted of the remaining counts. *See U.S. Sentencing Guidelines Manual* § 3D1.4 (1998). The offense level for group I was 35 and, given Miller's criminal history category of I, yielded a sentence range of 168 to 210 months imprisonment. This range was higher than the level 28 range associated with the group II convictions. Accordingly, after sentencing Miller to a total of 168 months imprisonment for the group I offenses, the court sentenced Miller on the group II counts to consecutive prison sentences totaling 168 months,[11] which were to run concurrently with the group I sentences.

This court reviews findings of fact on sentencing matters for clear error. *See United States v. Miller*, 166 F.3d 1153, 1155 (11th Cir. 1999). The district court found the total amount of loss to be $39,661,059. This figure represents the amount outstanding to Bank of America and Thrifty on March 31, 1991 — which, as noted above, was the date the defendants' fraud was discovered. None of the appellants seriously disputes the court's calculation of the amount outstanding to the bank: $19,021,302. The appellants do, however, challenge the district court's calculation of the amount outstanding to Thrifty.

Appellants argue that the court double counted letters of credit when calculating FTM's debt to Thrifty. This is untrue. The court found, based on intercompany debt reports, that the total

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11. The sentences for Miller's group II offenses ranged from 24 to 60 months.

amount FTM owed Thrifty for letters of credit was $27,593,258. The court could not precisely calculate the amount of this figure attributable to fraudulent letters of credit for two reasons. First, much of the documentation relating to these transactions was missing. Second, FTM frequently did not indicate on its payments (to Thrifty) which letters of credit were being repaid. Therefore, the court had to estimate what percentage of $27,593,258 the fraudulent letters of credit encompassed.

Basing its calculations on Bank of America's documents, the court determined the percent of fraudulent letters of credit outstanding for each quarter from September 1986 until March 1991. In turn, the court determined the average of those percentages (74.8%) and applied that number to the $27,593,258 that was outstanding to Thrifty on March 31, 1991. Although the result ($20,639,757) was not precise, it was reasonable. The sentencing guidelines recognize that often the amount of loss caused by fraud is difficult to determine accurately. Thus, courts may reasonably estimate that amount. *See U.S. Sentencing Guidelines Manual* § 2F1.1 commentary n. 9 (1998) ("For the purposes of subsection (b)(1), the loss need not be determined with precision. The court need only make a reasonable estimate of the loss, given the available information."); *see also United States v. Wilson*, 993 F.2d 214, 218 (11th Cir. 1993). Given the little information available to it, the district court's estimation of the loss defendants' fraud caused Thrifty, Pacific, and Bank of America was reasonable. In sum, we affirm the district court's

finding that the loss to Thrifty and Pacific was $20,639,757; the loss to Bank of America was $19,021,302; and the total loss was $39,661,059.

III.

Appellants' convictions and sentences are

AFFIRMED.

APPENDIX B — ELEVENTH CIRCUIT ORDER DENYING REHEARING AND REHEARING EN BANC (DECEMBER 13, 1999)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-5491-BB

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT O. MILLER, JR., NINA MILLER, and ROBERT WOHLLEBER,

Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, __ F.2d __).

Before: TJOFLAT, BLACK and CARNES, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ [illegible]
UNITED STATES CIRCUIT JUDGE